A

ABDUL AZIZ MOHD ALIAS

v.

TIMBALAN KETUA POLIS NEGARA, MALAYSIA & ANOR

B

FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ (MALAYA)
ZULKEFLI MAKINUDIN FCJ
MOHD GHAZALI YUSOFF FCJ
[CIVIL APPEAL NO: 01(f)-9-2009(W)]

C

8 FEBRUARY 2010

ADMINISTRATIVE LAW: *Public servants - Dismissal of police officer - Whether letter to show cause must specifically mention of possible penalty of dismissal or reduction in rank - Whether officer given reasonable*

D

opportunity of being heard and to state his case - Whether officer denied of his constitutional rights - Articles 5(1), 8(1) & 135(2) Federal Constitution - Regulation 28(1) Public Officers (Conduct and Discipline) Regulations 1993

E

PUBLIC SERVANTS: *Dismissal - Dismissal of police officer - Dismissal of Chief Inspector on charges under Public Officers (Conduct and Discipline) Regulations 1993 - Whether letter to show cause must specifically mention of possible penalty of dismissal or reduction in rank - Whether officer given reasonable opportunity of being heard and to state*

F

his case - Whether officer denied of his constitutional rights - Articles 5(1), 8(1) & 135(2) Federal Constitution - Regulation 28(1) Public Officers (Conduct and Discipline) Regulations 1993

POLICE: *Disciplinary proceedings - Dismissal - Dismissal of Chief Inspector on charges under Public Officers (Conduct and Discipline)*

G

Regulations 1993 - Whether officer may be presumed to know of his rights - Whether letter to show cause must specifically mention of possible penalty of dismissal or reduction in rank - Whether officer given reasonable opportunity of being heard and to state his case - Whether officer denied of his constitutional rights - Articles 5(1), 8(1) & 135(2) Federal

H

Constitution - Regulation 28(1) Public Officers (Conduct and Discipline) Regulations 1993

The appellant was formerly a Chief Inspector of Police. By way of a show cause letter dated 5 February 1997, disciplinary proceeding

I

was initiated by the first respondent against the appellant on seven charges under the Public Officers (Conduct and Discipline) Regulations 1993 ('the 1993 Regulations'). The appellant made his

representation to the said show cause letter in a letter dated 17 March 1997. The first respondent found the appellant guilty on all the seven charges and the punishment was dismissal under reg. 38(g) of the 1993 Regulations on charges No. (1), (2), (4), (5) and (6). The appellant was given a warning on charges No. (3) and (7) under reg. 38(a) of the 1993 Regulations. The appellant then instituted legal proceedings against the respondents for wrongful dismissal. The High Court dismissed the appellant's claim and the Court of Appeal dismissed the appellant's appeal. The Federal Court granted leave to the appellant to appeal on the following questions: "(1) Whether a public officer dismissed from service pursuant to reg. 28(1) of the 1993 Regulations is presumed to know of his rights and whether the public officer concerned is required to appreciate the said 1993 Regulations and therefore the letter to show cause is not required, to have in it, specific mention of possible penalty of dismissal or reduction in rank; and (2) Whether a public officer who is denied in the show cause letter communication of possible imposition of dismissal or reduction in rank is denied his constitutional rights under art. 135(2) of the Federal Constitution and art. 5(1), read with art. 8(1), of the Federal Constitution."

Held (dismissing the appeal with costs)
Per Zulkefli Makinudin FCJ:

(1) The 1993 Regulations is a federal law and duly gazetted under P.U.(A) 395. As it is a law duly gazetted, the public are deemed to have notice of the same. Therefore, the appellant as a public officer dismissed from service pursuant to reg. 28(1) of the 1993 Regulations was presumed to know of his rights under the 1993 Regulations. (para 12)

(2) The contractual status of a public servant and the Government is a special one, whereby the rights and obligations are determined by statutes or administrative rules made by the Government. Regulation 18 of the General Orders Chapter A (Appointment and Promotions) 1973 provides that every public servant is required to comply with any circular and rules issued by the Government from time to time. This requirement of compliance with Government Circulars and rules clearly shows that the public officer concerned is required to appreciate the said 1993 Regulations. The appellant was therefore aware of the sentence that could be meted out against him. (paras 16 & 17)

(3) The appellant was given sufficient notice of the sentence that can be imposed on him because the show cause letter clearly stated that the proceeding was conducted under reg. 28 of the 1993 Regulations. Regulation 28 of the 1993 Regulations specifically deals with a disciplinary case with a view to dismissal or reduction in rank. Furthermore, in the same show cause letter it was mentioned that if the appellant was found guilty for any of the seven charges, he was liable to be punished under reg. 38 of the 1993 Regulations, which is a punishment provision. (paras 18)

(4) Under art. 135(2) of the Federal Constitution the appellant had been given a reasonable opportunity of being heard. The appellant had a full opportunity to state his case on all the charges framed against him. Reasonable opportunity of being heard in art. 135(2) of the Federal Constitution does not require the disciplinary authority to inform the appellant of the possible punishment likely to be imposed on him as a public officer. In any event, the reference to reg. 28 of the 1993 Regulations in the show cause letter itself gave notice to the appellant the most severe punishment, that is a dismissal from service was one of the options available to the disciplinary authority together with other punishment such as a warning and other punishments in reg. 38. (paras 21 & 22)

(5) Question 1 was therefore answered in the positive and Question 2 was answered in the negative. (para 25)

Bahasa Malaysia *Translation Of Headnotes*

Perayu merupakan bekas Ketua Inspektor Polis. Melalui surat tunjuk sebab bertarikh 5 Februari 1997, prosiding tatatertib dimulakan oleh responden pertama terhadap perayu atas tujuh tuduhan-tuduhan di bawah Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('Peraturan 1993'). Perayu membuat bantahan kepada surat tunjuk sebab tersebut dalam satu surat bertarikh 17 Mac 1997. Responden pertama mendapati perayu bersalah atas kesemua tujuh tuduhan-tuduhan dan hukuman ialah pemecatan di bawah Peraturan 38(g) Peraturan 1993 atas tuduhan-tuduhan No. (1), (2), (4), (5), dan (6). Perayu telah diberi amaran atas tuduhan-tuduhan No. (3) dan (7) di bawah Peraturan 38(a) Peraturan 1993. Perayu kemudiannya memulakan prosiding undang-undang terhadap responden-responden untuk pemecatan salah. Mahkamah Tinggi menolak tuntutan perayu dan Mahkamah Rayuan menolak rayuan

perayu. Mahkamah Persekutuan memberi kebenaran pada perayu untuk merayu atas soalan-soalan berikut: (1) Sama ada seorang pegawai awam yang dipecat mengikut Peraturan 28(1) Peraturan 1993 dianggap mengetahui hak-haknya dan sama ada pegawai awam tersebut perlu sedar tentang Peraturan 1993 dan, oleh itu, surat untuk tunjuk sebab tidak perlu, untuk mengandungi dalamnya, sebutan khusus mengenai kemungkinan penalti pemecatan atau penurunan pangkat; dan (2) Sama ada seorang pegawai awam yang dinafikan dalam surat tunjuk sebab komunikasi tentang kemungkinan pemecatan atau penurunan pangkat telah dinafikan hak-hak berperlembagaannya di bawah Perkara 135(2) Perlembagaan Persekutuan dan Perkara 5(1), dibaca bersama dengan Perkara 8(1), Perlembagaan Persekutuan.

Diputuskan (menolak rayuan dengan kos)
Oleh Zulkefli Makinudin HMP:

(1) Peraturan 1993 ialah undang-undang perlembagaan dan telah diwartakan di bawah P.U.(A) 395. Oleh kerana ia adalah undang-undang yang diwartakan, orang awam dianggap mengetahui mengenainya. Oleh yang demikian, perayu sebagai seorang pegawai polis yang dipecat dari perkhidmatan mengikut Peraturan 28(1) Peraturan 1993 dianggap mengetahui hak-haknya di bawah Peraturan 1993.

(2) Status kontraktual seorang pegawai awam dan Kerajaan adalah khas, di mana hak-hak dan kewajipan-kewajipan ditentukan oleh statut atau rukun-rukun pentadbiran yang dibuat oleh Kerajaan. Peraturan 18 Arahan-arahan Am Bab A (Perlantikan dan Kenaikan Pangkat) 1973 menyediakan bahawa setiap pengkhidmat awam perlu mematuhi apa-apa risalah dan kanun yang dikeluarkan oleh Kerajaan dari masa ke semasa. Keperluan pematuhan ini dengan Risalah Kerajaan dan kanun jelas membuktikan bahawa pegawai awam tersebut perlu menyedari tentang Peraturan 1993. Perayu oleh itu sedar akan hukuman yang mungkin dikenakan terhadapnya.

(3) Perayu telah diberi notis mencukupi tentang hukuman yang boleh dikenakan ke atasnya kerana surat tunjuk sebab tersebut jelas menyatakan bahawa prosiding telah dijalankan di bawah Peraturan 28 Peraturan 1993. Peraturan 28 Peraturan 1993 mengendalikan dengan khusus kes tatatertib dengan pandangan

pada pemecatan atau penurunan pangkat. Lagipun, dalam surat tunjuk sebab yang sama ia telah disebut bahawa jika perayu didapati bersalah atas mana-mana tujuh tuduhan, beliau boleh dihukum di bawah Peraturan 38 Peraturan 1993, yang merupakan suatu peruntukan hukuman.

(4) Di bawah Perkara 135(2) Perlembagaan Persekutuan perayu telah diberi peluang munasabah untuk didengar. Perayu mempunyai peluang penuh untuk menyatakan kesnya atas kesemua tuduhan yang beliau menghadapi. Peluang munasabah untuk didengar di bawah Perkara 135(2) Perlembagaan Persekutuan tidak memerlukan Pihak Berkuasa Tatatertib untuk memberitahu perayu hukuman yang kemungkinan besar dikenakan ke atasnya sebagai seorang pegawai awam. Walau apapun, rujukan pada Peraturan 28 Peraturan 1993 di dalam surat tunjuk sebab tersebut memberi notis kepada perayu bahawa hukuman yang paling keras, iaitu pemecatan dari perkhidmatan ialah satu opsyen yang terdapat pada Pihak Berkuasa Tatatertib bersama dengan hukuman lain seperti amaran dan hukuman-hukuman lain dalam Peraturan 38.

(5) Soalan 1 oleh itu dijawab secara positif dan Soalan 2 dijawab secara negatif.

Case(s) referred to:

Dataran Rentas Sdn Bhd v. BMC Construction Sdn Bhd [2009] 3 CLJ 125 FC

Deputy Chief Police Officer, Perak & Anor v. Ramesh Thangaraju [2001] 1 CLJ 245 CA

Government of Malaysia v. Rosalind Oh Lee Pek Inn [1973] 1 MLJ 222

Inspector General of Police & Anor v. Alan Noor Kamat [1988] 1 MLJ 260

Krishnasamy & Ors v. DC Butler Madden [1947] 13 MLJ 182

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 FC

Najar Singh v. Government of Malaysia [1976] 1 MLJ 203

Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan [2002] 4 CLJ 105 FC

PP v. Koo Cheh Yew & Anor [1980] 2 MLJ 235

Legislation referred to:

Courts of Judicature Act 1964, s. 96(a)

Federal Constitution, arts. 5(1), 8(1), 135(2)

Food Control Proclamation, s. 12(2)

General Orders Chapter A (Appointment and Promotions) 1973, reg. 18

Interpretation Acts 1948 and 1967, s. 18(2)

Public Officers (Conduct and Discipline) Regulations 1993, regs. 27, 28(1), (2), (3), 38(a), (g)

Specific Relief Enactment, s. 45

For the appellant - Karpal Singh (Sanjeet Kaur & G Subramaniam Nair with him); M/s Karpal Singh & Co
For the respondents - Azizah Hj Nawawi SFC

[Appeal from Court of Appeal, Civil Appeal No: W-01-29-04]

Reported by Amutha Suppayah

JUDGMENT

Zulkefli Makinudin FCJ:

Introduction

[1] This is an appeal by the appellant against the decision of the Court of Appeal in dismissing the appellant's appeal against the decision of the High Court at Kuala Lumpur dated 15 December 2005. The relevant background facts of the case are as follows:

(i) The appellant was formerly a Chief Inspector of Police with the Police Force.

(ii) By way of a show cause letter dated 5 February 1997, disciplinary proceeding was initiated by the first respondent against the appellant on seven (7) charges under the Public Officers (Conduct and Discipline) Regulations 1993 ("the 1993 Regulations"). (See pp. 79-83 of appeal record volume II).

(iii) The appellant made his representation to the said show cause letter in a letter dated 17 March 1997. (See pp. 84-90 of appeal record volume II).

(iv) The appellant was informed on 25 April 1997 that the first respondent had found the appellant guilty on all the seven (7) charges and the punishment was dismissal under reg. 38(g) on charges No. (1), (2), (4), (5) and (6) of the 1993 Regulations. The appellant was given a warning on charges No. (3) and (7) under reg. 38(a) of the 1993 Regulations. (See pp. 91-93 of appeal record volume II).

(v) On 30 May 2000, the appellant instituted legal proceedings at the High Court in Kuala Lumpur against the respondents for wrongful dismissal.

(vi) On 15 December 2005 the learned judge of the High Court dismissed the appellant's claim with costs.

(vii) On 7 November 2008 the Court of Appeal dismissed the appellant's appeal against the decision of the High Court dated 15 December 2005.

(viii) On 11 May 2009, the Federal Court granted leave to the appellant to appeal against the decision of the Court of Appeal dated 7 November 2008 on the following questions:

(1) Whether a public officer dismissed from service pursuant to regulation 28(1) of the 1993 Regulations is presumed to know of his rights and whether the public officer concerned is required to appreciate the said 1993 Regulations and therefore the letter to show cause is not required, to have in it, specific mention of possible penalty of dismissal or reduction in rank; and

(2) Whether a public officer who is denied in the show cause letter communication of possible imposition of dismissal or reduction in rank is denied his constitutional rights under Article 135(2) of the Federal Constitution and Article 5(1), read with Article 8(1), of the Federal Constitution.

Appellant's Contention

[2] We noted that there are essentially two main grounds of appeal relied on by learned counsel for the appellant in the arguments made before us as follows:

[3] Firstly, it was contended for the appellant that the Court of Appeal was wrong in concluding that the appellant was presumed to have known of his rights and, therefore, should have appreciated the effect of reg. 28(1) of the said 1993 Regulations. It is the appellant's case that the Court of Appeal was wrong in finding that the first respondent was not required to have included in the show cause letter dated 5 February 1997 sent to the appellant specific mention of a possible penalty of dismissal or reduction in rank. In support of the appellant's contention on this point the case of *Krishnasamy & Ors. v. D.C. Butler Madden* [1947] 13 MLJ 182 was referred to us wherein Evans J had occasion to consider the issue on the presumption that one knows of one's rights at p. 193 as follows:

> The law in this case is, in part, to be found in Gazette Notification 80 and is subject to 'such orders and directions as they may from time to time receive from the Food Controller'. Whatever these words mean I do not exactly know, but they seem to make, if valid, the Assistant Food Controller's legal powers quite unknowable or known only to the Controller himself. The rule has always been qualified by the consideration that there are difficult and doubtful points of law. Moreover, as Lord Atkin said in *Evans v. Bartlam* [1973] AC 473 (HL):
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> > For my part I am not prepared to accept the view that there is in law any presumption that anyone, even a Judge, knows all the rules and orders of the Supreme Court. The fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application. I do not see its application here.

[4] Secondly, it was contended for the appellant that the Court of Appeal was wrong in not concluding that the appellant, who had not been informed in the show cause letter of a possible imposition of dismissal or reduction in rank, had been denied of his constitutional rights under art. 5(1), art. 8(1) and art. 135(2) of the Federal Constitution.

Article 5(1) of the Federal Constitution states:

> 5(1) No person shall be deprived of his life or personal liberty save in accordance with law.

Article 8(1) of the Federal Constitution states:

> 8(1) All persons are equal before the law and entitled to the equal protection of the law.

Article 135(2) of the Federal Constitution states:

> 135(2) No member of such service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

[5] On the issue of the denial of the appellant's constitutional rights learned counsel for the appellant referred to us the case of *Deputy Chief Police Officer, Perak & Anor. v. Ramesh Thangaraju* [2001] 1 CLJ 245 wherein in delivering the judgment of the Court of Appeal, Gopal Sri Ram JCA (as he then was), at p. 165 and 166, distilled the principles relating to procedural and substantive fairness in the following passages:

> It is, I think, settled beyond argument that procedural and substantive fairness are constitutionally guaranteed by the Federal Constitution. The cumulative operation of arts. 5(1) and 8(1) of the Federal Constitution ensures this.
>
> ...
>
> We have since jettisoned the narrow approach that hitherto held the field. A number of our decisions have conferred a broad and liberal interpretation upon arts 5(1) and 8(1). See *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan* [1996] 2 CLJ 771; *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan* [1997] 1 CLJ 665. The latter article in particular has the effect of ensuring fairness in all forms of state action and is of wide sweep. Then came the landmark decision of the present Federal Court in *Rama Chandran v. The Industrial Court of Malaysia* [1997] 1 CLJ 147. Edgar Joseph Jr. FCJ in a judgment of cardinal importance established that fairness included not only procedural fairness but substantive fairness as well. That decision marks the high level water-mark in our administrative law jurisprudence.

[6] Although in *Tan Tek Seng* the issue relating to the expression "life" in art. 5(1) was overruled in *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan* [2002] 4 CLJ 105, learned counsel for the appellant submitted that this court should take the opportunity to revisit *Sugumar* and adopt the exposition of "life" in its wider context in *Tan Tek Seng* and not restrict it only to personal liberty as was done in *Sugumar*.

[7] Learned counsel for the appellant further submitted that on the application of the principles relating to procedural and substantive fairness, the decision of the Supreme Court in the case of *Inspector General of Police & Anor. v. Alan Noor Kamat* [1988] 1 MLJ 260 which is of wider and significant import should be given due consideration by this court in evaluating the present case of the appellant. The show cause letter dated 5 February 1997 from the first respondent to the appellant in the second paragraph contained *inter alia* the following statement:

> Timbalan Ketua Polis Negara, setelah menimbangkan laporan itu, telah mendapati bahawa anda patut dikenakan tindakan tatatertib di bawah Peraturan 28, Peraturan-Peraturan Pegawai Awam (Kelakuan & Tatatertib) 1993.

[8] On the above statement it was submitted for the appellant that without adverting to dismissal or reduction in rank and having regard to the appellant ultimately being punished with dismissal on

charges No. (1), (2), (4), (5) and (6) and with a warning on charges No. (3) and (7), the said show cause letter, clearly, falls foul of the *ratio decidendi* in *Alan Noor* having regard to the following passage in the judgment of the Supreme Court at p. 262 as follows:

> … the show cause letter dated May 14, 1980 was completely silent as to the contemplated punishment to be imposed at the end of the disciplinary proceedings. Therefore, in order to ensure that the respondent understood and appreciated the seriousness of the proceedings he was facing, the learned trial judge was right in insisting that another chance must be given to him, which he called a plea of mitigation. If, however, the show cause letter had included the proposed punishment, for example, by the inclusion of such statement as 'This proceeding is taken against you with a view to dismissal or reduction in rank …', or such other phraseology as would give effect of making the respondent understand the nature of the proceedings and what they would lead to, …

Decision

[9] We shall first deal with Question 1 posed for our determination in this appeal. There are two (2) limbs to this question. Under the first limb it raises the question of whether a public officer dismissed from service pursuant to reg. 28(1) of the 1993 Regulations is presumed to know of his rights. Under the second limb it raises the question of whether the public officer concerned is required to appreciate the said 1993 Regulations and therefore, the letter to show cause is not required to have in it specific mention of a possible penalty of dismissal or reduction in rank.

[10] Regulation 28(1), (2) and (3) of the 1993 Regulations provide as follows:

> 28(1) The appropriate Disciplinary Authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature which merits a punishment of dismissal or reduction in rank shall consider all the available information and where it appears that there is a *prima facie* case against the officer for dismissal or reduction in rank, the appropriate Disciplinary Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall call upon him to

A make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

(2) Where after considering the representation made pursuant to subregulation (1), the appropriate Disciplinary Authority is of the
B opinion that the breach of discipline or misconduct by the officer does not merit the punishment of dismissal or reduction in rank, the appropriate Disciplinary Authority may impose on the officer any lesser punishment as it deems fit and proper.

(3) If the officer does not furnish any representation within the
C period specified in subregulation (1), or if the officer furnishes a representation which does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

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[11] Under reg. 28 of the 1993 Regulations the Disciplinary Authority is required to first determine that there is a *prima facie* case against the officer for dismissal or reduction in rank. Having found there is a *prima facie* case against the officer, the Disciplinary
E Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall called upon him to state in writing, within a period of twenty one (21) days from the
F date of receipt of the show cause letter, a representation containing grounds which the officer relies to exculpate himself. It is clear in the present case that the appellant was aware from the contents of the show cause letter sent to him and his representation that the Disciplinary Authority was proceeding against him under reg. 28 of
G the 1993 Regulations with a view to dismissal or reduction in rank. This finding is fortified by the fact that the appellant in his representation to the show cause letter had amongst others stated that he took the risks of flouting with the rules but did not anticipate that reg. 28 of the 1993 Regulations would be invoked
H against him.

[12] It is also to be noted that the 1993 Regulations is a federal law and duly gazetted under P.U.(A) 395. As it is a law duly gazetted, the public are deemed to have notice of the same. Therefore in our view in the present case the appellant as a public
I officer dismissed from service pursuant to reg. 28(1) of the 1993

Regulations is presumed to know of his rights under the 1993 Regulations. On this point useful reference may be made to s. 18(2) of the Interpretation Acts 1948 and 1967 ("the Interpretation Act") which states:

> 18(2) Publication in the official Gazette of Malaysia shall constitute sufficient notice of any matter required to be published in the Gazette by or under any federal law or required to be published in the Sabah Government Gazette or the Sarawak Government Gazette by or under any enactment of those States which has been declared to be a federal law.

[13] In the case of *PP v. Koo Cheh Yew & Anor.* [1980] 2 MLJ 235, the Federal Court in discussing the application of s. 18(2) of the Interpretation Acts *inter alia* at pp. 239 and 240 stated as follows:

> The proper interpretation of statute by the courts requires the application of enacted law. In our view, section 135(2) must be fully considered in the determination of the guilt or otherwise of the appellants. We consider that this subsection is in amplification and not in derogation of the publication in the Gazette. *In the ordinary law, this publication (which is common ground) not merely affords the public in general and the appellants in particular 'a practical and sensible way' in which they could ascertain the ban on importation of goods originating from South Africa, but also constitutes sufficient notice of the ban: section 18(2) Interpretation Act, 1967 (Rep. 1973)*. And this rule as to notice by publication is to our mind reinforced by section 135(2), so that we do not accept with respect the suggestion that the principle of *expressio unius exclusio alterius* applies. Whereas ordinarily the law presumes that the notice of the public has been sufficiently drawn to the ban by publication in the Gazette, section 135(2) now establishes more positively and as a fact that this ban is to the knowledge of the appellants …
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> … *In other words, if the law fixes the public with knowledge and deems the knowledge to be a fact and if as we have postulated, common sense and ordinary prudence and public policy require that every individual should so conduct himself as to keep at all times within the law,* … (emphasis added)

[14] As regards the case of *Krishnasamy & Ors. v. D.C. Butler Madden (supra)* cited for the appellant to support his contention that he cannot be presumed to know of his rights under the 1993 Regulations, we are of the view based on the facts, the case of *Krishnasamy* can be distinguished from the present case. The principle of law laid down in *Krishnasamy*'s case therefore cannot be

applied to the present case of the appellant. In *Krishnasamy*'s case there was an application made by the appellants for an order under s. 45 of the Specific Relief Enactment directed to the respondent who is the Assistant Food Controller to withdraw the cancellation of the appellants' retail licenses earlier issued to the appellants in February 1947. The licenses purported to be given by the Food Controller were signed by the respondent. They were limited to expire on 31 December 1947. At various dates between 12 and 18 March 1947 the appellants received a letter from the respondent informing each of them that their licenses were withdrawn. No notice of objection to their licenses or a proposal to withdraw was given to the appellants. It was held by the High Court *inter alia* that: (1) the Gazette Notification No. 80 of 1945 which purports to delegate certain powers to the Assistant Food Controller does not delegate to the Assistant Food Controller powers other than executive powers which can be exercised under the direction of a superior; (2) that although s. 12(2) of the Food Control Proclamation gives power to the Controller to revoke license "without any reason assigned" the Food Controller must in doing so exercise his discretion properly and fairly; and (3) the appellants cannot be presumed to know of the Food Controller's powers under the said Gazette Notification No. 80 of 1945 and the respondent cannot rely on it to deny the appellants' rights. The cancellation of the appellants' licenses in this case was illegal and an order under s. 45 of the Specific Relief Enactment should be issued.

[15] Unlike the appellants in the case of *Krishnasamy*, who were holders of retail licenses, in the present case the appellant is a public officer in the Government service wherein he is placed in a position of an employee-employer relationship and facing a disciplinary proceeding initiated by his employer against him. We are of the view since the 1993 Regulations have been duly gazetted under P.U.(A) 395, by virtue of s. 18(2) of the Interpretation Act its publication shall constitute sufficient notice to the appellant of any matter under the 1993 Regulations. It therefore follows that the appellant as a public officer is presumed to know of his rights under the 1993 Regulations.

[16] On the issue of whether the public officer concerned is required to appreciate the said 1993 Regulations, it has to be stated here that the contractual status of a public servant and the Government is a special one, whereby the rights and obligations are determined by statutes or administrative rules made by the

Government. Suffian FJ (as he then was) on this issue in the case of *Government of Malaysia v. Rosalind Oh Lee Pek Inn* [1973] 1 MLJ 222 at p. 224 made the following observation: A

> I should add that the contract between a public servant such as the plaintiff and the government is of a very special kind, for as was stated by Ramaswami J at page 1894 when delivering the judgment of the Indian Supreme Court in *Roshan Lal v. Union of India AIA* [1967] SC 1889: B
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> > It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government … The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. C D

[17] It can be noted from the above case that the rights and obligations of the public servants are determined by statutes or administrative rules. Regulation 18 of the General Orders Chapter A (Appointment and Promotions) 1973 in fact provides that every public servant is required to comply with any circular and rules issued by the Government from time to time. This requirement of compliance with Government Circulars and rules clearly shows that the public officer concerned is required to appreciate the said 1993 Regulations. We are therefore of the view the Court of Appeal is correct in its judgment when it stated *inter alia* that the appellant had made a full representation in its letter of reply to the show cause letter and had shown that he was aware of the sentence that can be meted out against him. E F G

[18] As regards the case of *Alan Noor* relied on by the appellant, we are of the view that the case of *Alan Noor* can be distinguished from the present case. In the show cause letter in *Alan Noor* it did not state the sentence that can be imposed. In the present case the appellant was given sufficient notice of the sentence that can be imposed on him because the show cause letter clearly stated that the proceeding was conducted under reg. 28 of the 1993 Regulations. Regulation 28 of the 1993 Regulations specifically deals with a disciplinary case with a view to dismissal or reduction in rank. Furthermore, in the same show cause letter it was mentioned H I

A that if the appellant was found guilty for any of the seven charges, he was liable to be punished under reg. 38 of the 1993 Regulations, which is a punishment provision.

[19] It should be noted that there is a distinction between
B proceedings taken under reg. 27 and reg. 28 of the 1993 Regulations. Regulation 27 encompasses procedures in disciplinary cases "not with a view to dismissal or reduction in rank", whereas reg. 28 is invoked where the Disciplinary Authority is of a view that the disciplinary case merits a punishment of dismissal or reduction in
C rank. However, the discretion as to which punishment under regulation 38 is to be inflicted on the officer remains with the Disciplinary Authority as provided by reg. 28(2). In the present case, the appellant was dismissed on five (5) charges but was given a warning on two (2) charges. It is our considered view that the
D Court of Appeal is correct when it stated that the provision of reg. 28(1) has to be read with reg. 28(2) in view of the fact that reg. 28(2) gives the discretion to the Disciplinary Authority to impose a lesser sentence that is appropriate under reg. 38. This is evident by the fact that the Disciplinary Authority imposed a lesser sentence
E under reg. 38(a) for the charges No. 3 and No. 7 consistent with the provision of reg. 28(2).

[20] We shall now deal with Question 2 posed for our determination in this appeal. Learned counsel for the respondents
F submitted that the issue raised under Question 2 was not decided by both the High Court and the Court of Appeal. Therefore the question framed for our determination does not come within the ambit of s. 96(a) of the Courts of Judicature Act 1964 and this court should not answer the question posed. The Federal Court's
G case of *Dataran Rentas Sdn Bhd v. BMC Construction Sdn Bhd* [2009] 3 CLJ 125 was cited for the respondents to support their contention. With respect, we do not agree with the respondents' contention on this point. Having considered the appellant's case in its entirety it is clear that both Question 1 and Question 2 relate
H to the show cause letter. The issue raised is whether in the show cause letter issued by the first respondent to the appellant there is a communication of a possible imposition of dismissal or reduction in rank. The further connected issue is whether in the absence of such a communication the appellant can be regarded to have been
I denied of his constitutional rights. In our view both the High Court as well as the Court of Appeal in the present case had decided on the issues raised. The contention of the respondents on this point is therefore rejected.

[21] Reverting back to Question 2 and on the issue of whether the appellant in this case had been denied of his constitutional rights or not, it is our considered view under art. 135(2) of the Federal Constitution the appellant had been given a reasonable opportunity of being heard. The appellant had a full opportunity to state his case on all the charges framed against him. The Federal Court on this issue in the case of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor. v. Utra Badi K Perumal* [2001] 2 CLJ 525 had cited with approval what the Privy Council said in *Najar Singh v. Government of Malaysia* [1976] 1 MLJ 203 which explained the words "being heard" at p. 205 as follows:

> In this passage which was cited by counsel on behalf of the appellant, in the context shows that the words 'being heard' meant 'being heard orally' but this passage is no support for the proposition that unless there is an oral hearing, there is a denial of natural justice. Indeed it points in the opposite direction. What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed. The Chapter D Regulations 1969 provided this and the appellant availed himself of the opportunity, though the contents of his representation were not disclosed, their Lordship are unable to say whether he presented a case of substance.

[22] We are of the view it must also be taken to mean that the reasonable opportunity of being heard in art. 135(2) of the Federal Constitution does not require the disciplinary authority to inform the appellant of the possible punishment likely to be imposed on him as a public officer. In any event in the present case the reference to reg. 28 of the 1993 Regulations in the show cause letter itself gives notice to the appellant the most severe punishment, that is a dismissal from service is one of the options available to the disciplinary authority together with other punishment such as a warning and other punishments in reg. 38.

[23] On the submission of learned counsel for the appellant that this Court should take the opportunity through the present case to revisit the case of *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishan (supra)* and expressed its views on the issue relating to the expression "life" in art. 5(1) of the Federal Constitution wherein in the case of *Tan Tak Seng (supra)* the court adopted the exposition of "life" in its wider context and not restricting it only to personal liberty as was done in *Sugumar*, we are of the view that it would not be appropriate on the facts of the present case for us

to do so. Even if we were to engage ourselves in the arguments of whether the Federal Court then in the case of *Pihak Berkuasa Negeri Sugumar v. S Balakrishnan (supra)* was correct in its decision it would still not assist us in determining the real issues before us in the present case. Perhaps in a more appropriate case and with a bigger members bench of this court the issue on the "revisit" of *Sugumar* can be taken up and the right approach to constitutional interpretation of art. 5(1) be left decided by this apex court.

[24] On the requirement for the provisions in any disciplinary procedure or regulations such as the 1993 Regulations to comply with the principles relating to procedural and substantive fairness guaranteed under arts. 5(1) and 8(1) of the Federal Constitution as contended by learned counsel for the appellant, we only need to state here that the Federal Court in *Lembaga Tatatertib Perkhidmatan Hospital Besar Pulau Pinang & Anor. v. Utra Badi K Perumal (supra)* had already decided that the General Orders which in our view would include the 1993 Regulations are in accord with the principles of natural justice and procedural fairness wherein at p. 551 it had this to say:

> Taking all the above into consideration, we are of the view that the General Orders, in detailing the procedure therein, have sufficiently complied with article 135(2) of the Federal Constitution and, in the process, are in accord with the concept of natural justice and procedural fairness.

Conclusion

[25] For the reasons above stated the answer to Question 1 must be in the positive and the answer to Question 2 must be in the negative. The appeal is therefore dismissed with costs. Deposit is to be paid to the respondents on account of taxed costs.